GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT

TESTIMONY OF

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DIRECTOR

Bill 17-675, “Promotion of Affordable Housing Investment Amendment Act of 2008”

Committee on Finance and Revenue
The Honorable Jack Evans, Chairman
Council of the District of Columbia

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John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Chairman Evans and members of the Committee on Finance and Revenue, I am Leila Finucane Edmonds, Director of the Department of Housing and Community Development ("DHCD" or the "Department"). I am pleased to submit testimony to the Committee today to discuss the impact of Bill 17-675 ("Promotion of Affordable Housing Investment Amendment Act of 2008") on revenue received by the Housing Production Trust Fund (the "HPTF" or "Trust Fund") which supports good quality affordable housing in the District; as well as the impact of exempting deed recordation taxes on Low Income Housing Tax Credit (LIHTC) transactions that finance much needed affordable housing.

It is DHCD's mission to create and preserve opportunities for affordable housing and economic development and to revitalize underserved communities. One way that we execute our mission is through the provision of gap financing for affordable housing and community facility projects. Our largest source of funding in recent years has been the Housing Production Trust Fund. As you are aware, the Trust Fund is funded through 15% of the revenues received from the deed recordation and transfer taxes, and therefore, is dependent on the state of the District's real estate market and the payment of those fees. The decline in the real estate market has resulted in decreasing revenues received from the Trust Fund. The Trust Fund received $52.6 million in actual revenue in FY 2007. This figure decreased to $33.7 million in FY 2008 and has been projected at $28.7 million for FY 2009. This represents a 45% decrease from FY 2007 to FY 2009.

Another source of affordable housing financing is the Low Income Housing Tax Credit program. DHCD is responsible for administering the District's LIHTC allocation process, including both the 9 % tax credits underwritten by DHCD and the 4% tax credits underwritten by the Housing Finance Agency in conjunction with tax exempt municipal bonds. The Tax Reform Act of 1986, as amended, established the federal Tax Credit Program to encourage private investment for the construction and rehabilitation of affordable housing to benefit low and moderate income individuals and families. Tax Credits are a dollar-for-dollar reduction in federal tax liability for private investors in exchange for providing investment dollars to develop affordable rental housing. For-profit investors inject equity into projects based on the tax benefits to be received. This private capital investment in affordable housing projects allows rental units to be developed at below-market rates. LIHTC projects must meet income eligibility requirements for the tenants; and unit rents are restricted and available to low-income tenants for at least 30 years.

As the manager of the Trust Fund and as the administrator of the LIHTC allocations, DHCD has an interest in maintaining HPTF revenue sources and, in compliance with the Internal Revenue Code, in ensuring that government subsidies are only what is necessary to make affordable housing transactions feasible.

The proposed Bill 17-675 would exempt buyers of affordable housing properties in the District of Columbia from the payment of deed recordation taxes, if the deed records the transfer of economic interests in a partnership or limited liability company (LLC) that owns a low-income residential property as its sole asset and the sole purpose of the transfer is to admit limited partners or investor members who will make capital contributions and receive tax benefits pursuant to the Federal Low Income Tax Credit Program (26 U.S.C. § 42), or a comparable District program. The bill proposes that this exemption be retroactive to any deed executed or recorded on or after September 1, 2007; and that any amounts paid are "promptly refunded."

District law allows such a deed recordation tax exemption in its Tenant Opportunity to Purchase Act (TOPA) projects. District tax laws also exempt recordation taxes affecting real property transferred by non-profit organizations entitled to exemption from real property taxation, if the non-profit applies for the exemption. The DHCD projects that will be affected by the proposed exemption are projects using low income housing tax credits, which in FY 2008 included approximately three (3) 9% credit projects, and nine (9) in 4% projects.

The recordation transfer taxes are included in a project's total development costs and are part of DHCD's evaluation of the gap financing subsidy needed to complete a transaction. Thus, any taxes previously paid should not be retroactively refunded, unless the refunded dollars would be given to DHCD. Otherwise the refunds would be a windfall to the developer. In past transactions, DHCD would already have accounted for the payment of these taxes in determining its level of investment and issuance of tax credits. If the developer is a non-profit, then they could apply for an exemption from this tax, and this in turn would be discounted in our underwriting process.

In some respects, the impact on DHCD may appear minimal since the exemption would result in a lower "Total Development Cost" amount per project, and thus reduce the amount of DHCD gap funding for each affected project. However, DHCD notes that there is no fiscal impact statement and that this would be necessary to determine what the impact would be on the projected use of the remaining 85% of these taxes.

Also, if this proposed legislation were to advance, the Department would recommend striking the phrase, "or a comparable District program" from Section 2, in proposed changes to DC Official Code §42-1102.02 (c)(1). This phrase is unclear, unworkable and has no definition.

From DHCD's review of neighboring states, it is our understanding that no such broad exemption applies for LIHTC transactions. In Maryland, where ownership identities are 100% the same, real estate interest transfers to limited partnerships or LLCs are exempt. In Virginia, a partnership or LLC is exempt from deed recordation taxes when the grantors are entitled to receive no less than 50% of the profits and surplus of the company after the transfer, and the transfer of the control of the assets of the company is not to avoid taxes.

I want to take this moment to thank the Council for its leadership and recognition of the importance of directing resources to affordable housing production. As you know, the Fenty Administration is committed to the creation and preservation of affordable housing to serve all District residents. Both the Housing Production Trust Fund and the LIHTC program are valuable mechanisms by which we can support the production and preservation of affordable housing. Especially in light of economic times and not having a fiscal impact statement for prospective impact of the loss of this tax revenue and refund payments, we cannot support the proposed Bill 17-675, "Promotion of Affordable Housing Investment Amendment Act of 2008."

Chairman Evans, this concludes my testimony. Thank you for the opportunity to provide comments on the proposed bill.